

1 ERIC A. NYBERG, ESQ. (Bar No. 131105)  
2 KORNFIELD, NYBERG, BENDES & KUHNER, P.C.  
3 1970 Broadway, Suite 225  
Oakland, California 94612  
Telephone: (510) 763-1000  
Facsimile: (510) 273-8669

4 Attorneys for First Street Commercial Mortgage Fund, LLC  
5  
6  
7

8  
9  
10 UNITED STATES BANKRUPTCY COURT  
11  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 In re  
14  
15 BENYAM and PAULA MULUGETA,  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Debtors.

Case No. 09-51900 ASW

Chapter 11

**OBJECTION OF FIRST STREET  
COMMERCIAL MORTGAGE  
FUND, LLC TO MOTION TO  
SELL REAL PROPERTY KNOWN  
AS 353 GRAND AVENUE,  
OAKLAND FREE AND CLEAR OF  
LIENS**

---

Date: August 23, 2011

Time: 2:15 p.m.

Ctrm: 3020

U.S. Bankruptcy Court  
280 South First Street  
Third Floor  
San Jose, California

First Street Commercial Mortgage Fund, LLC ("First Street") who is both the holder of a beneficial interest in the deed of trust encumbering the Debtors' Real Property commonly known as 240 E. O'Keefe, East Palo Alto, California (the "Real Property") and the loan servicer for said note and deed of trust, submits the following objection to the Debtor's Motion to Sell Real Property Known as 353 Grand Avenue, Oakland California Free and Clear of Liens (the "Motion").

As stated above, First Street is both the holder of a beneficial interest in a promissory note in the original principal amount of \$1,000,000 which is secured by a second deed of trust

1 against the Real Property. In addition to being the holder of a beneficial interest in the note and  
2 deed of trust, First Street is also the loan servicer for said note and deed of trust.

3 The note and deed of trust is referred to by the Debtors in their Motion as the second  
4 deed of trust held by California Mortgage and Realty.

5 The Debtors' Motion purports to only pay the First Street note "...up to \$200,000 from  
6 this transaction."

7 First Street objects to the sale to the extent that it does not provide for full payment on  
8 the First Street obligation. The Debtors provide no legal authority to support their attempt to sell  
9 the Real Property without fully satisfying the First Street note and deed of trust.

10 Further, to the extent the Debtors' Motion purports to sell the Real Property free and  
11 clear of the First Street Commercial Note and Deed of Trust, the Debtors have cited no authority  
12 which would support a sale free and clear pursuant to 11 U.S.C. § 363(f).

13 11 U.S.C. 363(f) provides:

14 (f) The trustee may sell property under subsection (b) or (c) of this  
15 section free and clear of any interest in such property of an entity  
16 other than the estate, only if—

17 (1) applicable nonbankruptcy law permits sale of such  
18 property free and clear of such interest;  
19 (2) such entity consents;  
20 (3) such interest is a lien and the price at which such  
property is to be sold is greater than the aggregate value of  
all liens on such property;  
21 (4) such interest is in bona fide dispute; or  
22 (5) such entity could be compelled, in a legal or equitable  
proceeding, to accept a money satisfaction of such interest.

23 The Debtors' Motion is void of any analysis of 11 U.S.C. 363(f). First Street  
24 respectfully submits that the sale cannot be approved free and clear of its lien because none of the  
25 five (5) enumerated bases upon which this Court could approve a sale free and clear of liens exists  
26 and certainly there is no evidence submitted by the Debtors to suggest that any one of the five (5)  
27 enumerated bases are selling free and clear under 11 U.S.C. § 363(f) is applicable to the instant  
28 sale.

29 Based upon the foregoing, First Street Commercial respectfully requests that the Court

1 deny the Debtors' Motion to Sell Real Property.

2  
3 Dated: August 1, 2011

KORNFIELD, NYBERG, BENDES & KUHNER, P.C.

6 By: /s/ Eric A. Nyberg  
7 (Bar No. 131105)

8 Attorneys for First Street Commercial Mortgage  
Fund, LLC

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Kornfield, Nyberg, Bendes & Kuhner, P.C.  
1970 Broadway, Suite 225  
Oakland, California 94612  
(510) 763-1000  
FAX: (510) 273-3669

1

## DECLARATION OF SERVICE

2

I, the undersigned, declare:

3

I am employed in the City of Oakland, County of Alameda, California. I am over the age  
4 of 18 years and not a party to this action. My business address is 1970 Broadway, Suite 225,  
5 Oakland, California 94612.

6

I am readily familiar with the business practices of my employer, Kornfield, Nyberg,  
7 Bendas & Kuhner, P.C., for the collection and processing of correspondence for mailing with the  
8 United States Postal Service and that correspondence is deposited with the United States Postal  
9 Service that same day in the ordinary course of business.

10

On August 1, 2011, I served the following document(s):

11

### **OBJECTION OF FIRST STREET COMMERCIAL MORTGAGE FUND, LLC TO MOTION TO SELL REAL PROPERTY KNOWN AS 353 GRAND AVENUE, OAKLAND FREE AND CLEAR OF LIENS**

12

by placing copies of said document(s) in sealed envelope(s) and served in the manner or manners  
13 described below addressed as follows:

14

U.S. Trustee  
Office of the U.S. Trustee  
U.S. Federal Building  
280 So. 1<sup>st</sup> Street, #268  
San Jose, CA 95113

Benyam & Paula Mulugeta  
1025 Harker Ave.  
Palo Alto, CA 94301

15

Richard W. Abbey  
Rachel K. Stevenson  
Abbey, Weitzenberg, Warren & Emery  
100 Stony Point Road, Suite 200  
P.O. Box 1566  
Santa Rosa, CA 95402

EMC Mortgage Corporation  
Attn: Bankruptcy Department  
P.O. Box 293150  
Lewisville, TX 75029

16

Loan Oak Fund, LLC  
Attn: Simon Aron  
Wolf, Rifkin, Shapiro, Schulman & Rabkin,  
LLP  
11400 West Olympic Blvd, Ninth Floor

Countrywide Home Loans Servicing, Inc.  
c/o Richard J. Bauer  
Miles, Bauer, Bergstrom & Winter, LLP  
1665 Scenic Ave., Ste 200  
Costa Mesa, CA 92626

17

Washington Mutual Bank  
c/o Melodie A. Whitson  
Pite Duncan, LLP  
4375 Jutland Drive, Suite 200  
P.O. Box 17933  
San Diego, CA 92177

Chase  
P.O. Box 94014  
Palatine, IL 60094

18

19

20

21

22

1 Aglaia Panos  
2 13240 Clairepoint Way  
3 Oakland, CA 94619

Robert Taylor  
541B Cowper  
Palo Alto, CA 94301

4 Sequoia Mortgage  
5 1114 Irwin Street  
6 San Rafael, CA 94901

Tomoko Nakama  
1569 Jackson St.  
7 Oakland, CA 94612

8 I placed such envelope(s) for collection and mailing at my employer's office following  
9 ordinary business practices, addressed to the addressee(s) designated.

10 I declare under penalty of perjury that the foregoing is true and correct. Executed this 1st  
11 day of August, 2011 at Oakland, California.

12 /s/ Jessica Mangaccat